

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

REGINA WAYNETTE ROBERSON

PLAINTIFF

V.

CIVIL ACTION NO.1:03CV572-JAD

WAL-MART STORES, INC.

DEFENDANT

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR SUMMARY JUDGMENT

The court has considered the defendant's motion for summary judgment (Doc. 32) and the plaintiff's response. An end cap shelving unit suddenly collapsed, causing salt blocks to strike the plaintiff who was pushing a cart down the aisle. The salt blocks weigh 20-25 pounds. Wal-Mart employees responded and waited with the plaintiff until an ambulance responded to take her to the hospital. While there are pictures of the shelving unit, Wal-Mart has disposed of the support brackets to end-unit, notwithstanding its policy that this evidence should be retained. It offers no explanation for the disappearance of this evidence.

In its motion Wal-Mart contends that there is no proof of any negligence on its part. The plaintiff counters that the doctrine of *res ipsa loquitur* is applicable as well as spoliation of evidence to raise an inference of negligence. The court reserves ruling on these issue at this time but finds that summary judgment is inappropriate.

With regard to liability for compensatory damages, there are clearly genuine issues of material fact which cannot be resolved by summary judgment. F.R.Civ.P. 56. In any event, the court has the discretion, which it should exercise here, to allow the plaintiff's claims to proceed to trial. *See, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)

(“Neither do we suggest ... that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial.”).

The plaintiff concedes that there is no proof to support her claim for punitive damages.

IT IS ORDERED that the motion for summary judgment is granted to the extent that the claim for punitive damages is dismissed. The motion for summary judgment is otherwise denied.

SO ORDERED this the 1st day of September, 2005.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE